

ORDER OF THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

The Wisconsin Employment Relations Commission hereby amends ERC 33, Appendices A, B and C relating to the calculation of a qualified economic offer in collective bargaining with professional school district employees.

To amend ERC 33, Appendices A, B and C the Commission exercises its authority under ss. 111.70(4)(cm)8, 111.71(1), and 227.24(1), Stats.

The amendment of ERC 33, Appendices A, B and C is required by 1999 Wisconsin Act 9's amendment of the statutory definition of a qualified economic offer in s. 111.70(1)(nc)1.c., Stats., and the ruling of the Wisconsin Court of Appeals in *Racine Education Ass'n v. WERC*, 238, Wis.2d 33 (2000). The amended statutory definition of qualified economic offer first applies to school district professional employee bargaining agreements covering the period of July 1, 2001 through June 30, 2003.

As amended, ERC 33, Appendices A, B and C allow a school district to accurately calculate the level of salary increase, if any, which the district must offer to the labor organization representing the district's professional employees as part of a qualified economic offer. As amended, ERC 33, Appendices A, B and C implement (1) the statutory requirement that salary increases due to a promotion or the attainment of increased professional qualifications are not part of a qualified economic offer; and (2) the ruling of the Court in *Racine Education Ass'n v. WERC* that a qualified economic offer cannot exceed a 3.8% increase in salary and fringe benefit costs.

As required by Sec. 227.24(1), Stats., we find that it is necessary to promulgate the attached amendment to ERC 33, Appendices A, B, and C as an emergency rule to preserve the public peace, health, safety and welfare. Absent promulgation of this emergency rule, the timely and peaceful resolution of collective bargaining disputes in Wisconsin will be endangered.

This emergency rule shall take effect on the day of publication in the official state newspaper as provided in Sec. 227.24(1)(c), Stats.

Given under our hands and seal at the City of Madison, Wisconsin this 12th day of January, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

EMPLOYMENT RELATIONS COMMISSION

Chapter ERC 33

APPENDIX

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

QUALIFIED ECONOMIC OFFER CALCULATION

FORM A

This form and Form B must be provided by the district to the labor organization 60 days prior to contract expiration, or whenever a qualified economic offer is made, whichever is earlier.

DEVELOPING A QUALIFIED ECONOMIC OFFER

Developing Employee Base

1. Identify all school district professional employees (as defined by Sec. 111.70(1)(ne), Stats.) who were represented by the labor organization for the purposes of collective bargaining and contract administration on the 90th day prior to the expiration of the current/most recently expired bargaining agreement. School district professional employees who were employed on the 90th day but who thereafter retire, resign or are terminated prior to the expiration of the current/most recently expired contract are included. School district professional employees on layoff, sick leave or leave of absence must be included if they continue to be represented by the labor organization for the purposes of collective bargaining and contract administration. School district professional employees who are replacing employees who are in leave status are not included unless they are represented by the labor organization for the purposes of collective bargaining and contract administration in the same bargaining unit as the employee being replaced.

Developing Fringe Base

2. Identify all fringe benefits and your percentage contribution toward the cost thereof as such benefits and contributions existed on the 90th day prior to the expiration of the current/most recently expired agreement, or the 90th day prior to the date on which your negotiations actually commenced if there is no previous collective bargaining agreement between the parties. If your fringe benefit contribution level is expressed as a dollar amount, convert the dollar amount to a percentage for the purposes of this calculation.

Total Base Cost Calculation

3. Using the employees identified in Step 1 and the fringe benefits and employer percentage contribution levels identified in Step 2, complete Form B to calculate the employer cost of

compensation and fringe benefits for the year preceding the expiration date specified in your current/most recently expired contract. For the purposes of this calculation, assume that any cost increase incurred during the year was in effect for the entire year. In your calculation, you must include the cost of any benefits Step 1 employees who retire will receive/received prior to the expiration of your current/most recently expired contract. Do not include the cost of providing benefits to employees who retired before the 90th day prior to the expiration of the current/most recently-expired contract.

Enter the total base year salary and fringe benefit costs from Form B here.

Salary _____

Fringe _____

Total _____

QEO 1 Dollar Amounts

4. Calculate 3.8%, 2.1% and 1.7% your Step 3 total and enter here

3.8% = _____ 2.1% = _____ 1.7% = _____.

For the purposes of the following calculations, *do not* assume any change in: (1) the identity of Step 1 employees; (2) the level of service they provide to the district or (3) the fringe benefits Step 1 employees received or the applicable employer % contribution level. *Do* assume that any cost increase incurred during the year was in effect for the entire year.

QEO 1 Fringe Benefit Calculation

5. Using the same employees identified in Step 1 and the fringe benefits and employer percentage contribution levels identified in Step 2, calculate the actual employer cost of maintaining the fringe benefits and employer percentage contribution levels for the first 12-month period following the stated expiration date in the current/most recently expired contract. If your contract will have a duration of less than 12 months, prorate your cost calculation to reflect your actual contract duration, if appropriate. **Enter this cost here and on Form B, QEO 1, fringe benefit cost.** _____

6. Subtract your Step 3 base fringe benefit cost from your Step 5 cost and calculate the result as a percentage of your total Step 3 base year cost. **Enter the result here and on Form B, QEO 1, fringe benefit percentage.** _____

QEO 1 Step Calculation

7. For the first 12-month period following the stated expiration date in the current/most recently expired contract, calculate the total additional cost of providing each employee identified in

Step 1 with any salary increase to which they would be entitled by virtue of an additional year of service on the salary schedule (longevity is to be included if part of salary schedule). **Enter this cost here and on Form B, QEO 1, Step Advancement** _____.

8. Calculate your Step 7 cost as a percentage of the total Step 3 base year cost. **Enter the result here.** _____

End of first year QEO calculation

If you are bargaining a contract with a duration of 12 months or less, stop and proceed to the Qualified Economic Offer Instruction, Form C.

Start of second year QEO calculation

Total QEO 1 Base Cost Calculation

9. Repeat Step 3 for the first 12-month period following the stated expiration date of your current/most recently-expired contract. **Enter the total QEO 1 salary and fringe benefit costs from Form B here.**

Salary _____

Fringe _____

Total _____

QEO 2 Dollar Amounts

10. Calculate 3.8%, 2.1% and 1.7% of your Step 9 total and enter here:

3.8% = _____ 2.1% = _____ 1.7% = _____.

QEO 2 Fringe Benefit Calculation

If your contract will have a duration of less than 24 months, prorate your QEO 2 cost calculation to reflect your actual contract duration, if appropriate.

11. Repeat Step 5 for the second 12-month period following the stated expiration date in the current/most recently expired contract. **Enter this cost here and on Form B, QEO 2, fringe benefit cost** _____.

12. Subtract your Step 9 fringe benefit cost from your Step 11 cost and calculate the result as a percentage of your Step 9 total QEO 1 cost. **Enter the result here and on QEO 2, Form B, fringe benefit percentage** _____.

13. Repeat Step 7 calculation for the second 12-month period following the stated expiration date in the current/most recently-expired contract. **Enter the cost here and on Form B, QEO 2, Step Advancement.** _____.

14. Calculate your Step 13 cost as a percentage of your Step 9 total QEO 1 cost. **Enter the result here** _____.

Proceed to the qualified economic offer instruction Form C.

FORM B

This Form and Form A must be provided by the district to the labor organization 60 days prior to contract expiration, or whenever a qualified economic offer is made, whichever is earlier.

Salary	Base Year	QEO1 1/	QEO2 1/
Salary Schedule	_____	_____ ^{2/}	_____ ^{3/}
Additional Step Advancement	_____ <u>XXXX</u>	_____	_____
Additional QEO Salary Schedule Cost	_____ <u>XXXX</u>	_____	_____
Salary Subtotal	_____	_____	_____
Longevity (include here if not on salary schedule)	_____	_____	_____
Extended Contracts	_____	_____	_____
Co-Curricular Pay	_____	_____	_____
Extra Duty Pay	_____	_____	_____
Athletic Events	_____	_____	_____
Department Head	_____	_____	_____
Curricular Work	_____	_____	_____
Overload Pay	_____	_____	_____
M-Team	_____	_____	_____
IEP	_____	_____	_____
Supervision	_____	_____	_____
Other _____	_____	_____	_____
Total Extra Duty Pay	_____	_____	_____
Summer School	_____	_____	_____
Severance Pay	_____	_____	_____
Sick Leave Payout	_____	_____	_____
Other _____	_____	_____	_____
Total Salary Cost	_____	_____	_____

¹ The QEO1 and QEO2 salary costs will remain the same as the base year costs for longevity (if not a step), extended contracts, co-curricular pay, extra duty pay, summer school, severance pay, sick leave payout, etc. unless the rate of compensation increases due to an increase in the salary schedule or an additional year of service entitles base year employee(s) to additional compensation.

² Enter base year salary subtotal.

³ Enter QEO1 salary subtotal.

Fringe Benefit Costs

Credit Reimbursement 4/	_____	_____	_____
Social Security	_____	_____	_____
Retirement	_____	_____	_____
Health Insurance	_____	_____	_____
No.S _____ No.F _____			
Employer % Contribution			
Level S _____ F _____	_____	_____	_____
Dental Insurance	_____	_____	_____
No.S _____ No.F _____			
Employer % Contribution			
Level S _____ F _____	_____	_____	_____
Vision Insurance	_____	_____	_____
No.S _____ No.F _____			
Employer % Contribution			
Level S _____ F _____	_____	_____	_____
Life Insurance	_____	_____	_____
Employer % Contribution			
Level _____	_____	_____	_____
Disability Insurance			
Employer % Contribution			
Level _____	_____	_____	_____
Long-Term Care Insurance			
Employer % Contribution			
Level _____	_____	_____	_____
Other _____	_____	_____	_____
Total Fringe Benefit Cost	_____	_____	_____
Total Salary and Fringe Benefit Cost	_____	_____	_____
QEO1 Increased/decreased salary cost as a percentage of base			
Year total salary and fringe benefit cost		_____	
QEO1 Increased/decreased fringe benefit cost as a percentage of			
base Year total salary and fringe benefit cost		_____	
QEO2 Increased/decreased salary cost as a percentage of QEO1			
total salary and fringe benefit cost			_____
QEO2 Increased/decreased fringe benefit cost as a percentage of			
QEO1 total salary and fringe benefit cost			_____

Attach a chart identifying the number of base year employees at each step and lane on any existing salary schedule. We swear that we completed this form in as accurate a manner as possible.

_____ Superintendent/ Business Manager	_____ Date
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_____ Treasurer	_____ Date
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^{4/} The QEO1 and QEO2 credit reimbursement costs will remain the same as the base year costs unless the rate of reimbursement increases due to an increase in the salary schedule.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION QUALIFIED ECONOMIC OFFER
INSTRUCTIONS**

FORM C

Utilize the following instructions to determine the components of a qualified economic offer.

Note: If payment of any appropriate salary increase would raise your fringe benefit costs (due to resultant social security and retirement cost increases) above 1.7% of Step 3 (base cost), then reduce the salary increase in the amount necessary to keep the combined cost of fringe benefits, steps, and average salary increase at 3.8% of Step 3 (base cost).

DEVELOPING A QUALIFIED ECONOMIC OFFER

When calculating any appropriate salary increase or decrease, include any increased or decreased salary cost in extended contracts, co-curricular pay, extra duty pay, etc., which is produced by salary schedule increases or decreases or payment of steps or lanes.

1. Complete Forms A and B.
2. Using the information on Form A, determine how the law requires you to proceed by identifying the cost combination that applies to the first 12-month period of your offer.
 - A. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps), are less than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purpose of collective bargaining and contract administration:
 1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
 2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.
 3. Pay an average salary increase to all employees in an amount determined by the difference between 3.8% of Step 3 (base cost) and the combined cost of Step 6 (fringe benefits) and Step 8 (steps) and in a manner which does not alter the relationship between steps and lanes in your existing salary structure. The options available for distribution of the general salary increase are a uniform dollar amount increase on each salary cell; or a uniform % increase to each salary cell; or an increase in the base which increases each cell in accordance with the existing salary structure.
 - B. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps) are 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:
 1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
 2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.

- C. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps) are more than 3.8% of Step 3 (base cost) but the cost of Step 6 (fringe benefits) is less than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:
1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
 2. Calculate the prorated portion of Step 7 (steps) which can be funded by 3.8% of Step 3 (base cost) minus the cost identified by Step 5 (fringe benefits). To identify the proration percentage, identify the amount of money available to fund steps and divide by the amount of money necessary to fully fund steps.
 3. Pay the same prorated salary increase to all eligible employees entitled thereto by virtue of an additional year of employment on the salary schedule. Include longevity payments if they are part of the salary schedule. For example, if the foregoing calculation would allow payment of half of the Step 7 (steps) salary increase to eligible Step 1 employees, you must pay one-half of the salary increase to which any of your actual employees are entitled by virtue of an additional year of service on the salary schedule during the first 12 months of your offer.
- D. If the cost identified by Step 6 (fringe benefits) is 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining the contract administration:
1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
- E. If the cost identified by Step 6 (fringe benefits) is more than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:
1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
 2. You may decrease the salary of all employees in an amount determined by the difference between the cost identified by Step 6 (fringe benefits) and 3.8% of Step 3 (base cost) and in a manner which does not alter the relationship between steps and lanes on your existing salary structure. The options available for distribution of the average salary decrease are a uniform dollar amount decrease on each salary cell; or a uniform % decrease on each salary cell; or a decrease in the base which decreases each cell in accordance with the existing salary structure.

For the second year or portion thereof, repeat your evaluation of options A-E utilizing the costs identified in Steps 9-14 of Form A.

FORM D

Pursuant to s. 111.70 (4) (cm) 8s, Stats., the municipal employer shall file a completed copy of this form with the Wisconsin employment relations commission and the labor organization as soon as possible after the effective date of any collective bargaining agreement covering school district professional employees for any period after June 30, 1993.

Name of school district _____

Name of labor organization _____

Date agreement became effective _____

Period after June 30, 1993 covered by the agreement _____

Total increased percentage salary cost for each
12-month period of the post-June 30, 1993 period 1/ _____

Total increased percentage fringe benefit cost for
each 12-month period of the post-June 30, 1993, period 1/ _____

Dated this _____ day of _____, 199_.

By _____

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ENDNOTES

1/ Calculate these costs using the same method and employees used to complete commission Forms A and B.

[NOTE: The WERC 1-12-01 Order did not amend FORM D. This page is included for reader convenience.]